



November 13, 2018

To: Jill Sewell  
Contract Awards Branch Chief  
Department of Transportation  
Division of Engineering Services  
Office Engineer MS 43  
1727 30th Street  
Sacramento, CA 95816

Re: Bid Protest  
04-4H9804 Hwy 101  
Bid Date: October 31, 2018

Dear Mrs. Sewell,

On Wednesday, October 31, 2018, Ghilotti Construction Company, Inc. (Ghilotti) bid the above referenced project and at the time of the bid opening was the 2<sup>nd</sup> apparent low bidder. This letters serves as a formal protest of the bid submitted by Ghilotti Bros., Inc. (GBI), the apparent low bidder.

The Dept. of Transportation must reject GBI's bid as nonresponsive because it failed to comply with the DBE Good Faith Effort requirements.

The Department's specification 2-1.12B(1) states: "Meet the DBE goal shown on the *Notice to Bidders* or demonstrate that you made adequate good faith efforts to meet this goal."

The DBE Contract goal is 15 % for this project. GBI achieved only 7.75% DBE participation.

GBI neither met the goal nor demonstrated that it made adequate good faith efforts to meet this goal.

GBI submitted its DBE Commitment form for contract 04-4H9804 claiming \$325,268.04 or 7.75% DBE participation of its total bid price of \$4,197,777.

GBI made less than 48% of its contract value available to DBE firms. Furthermore, it did not make the following scopes of work available for DBE participation:

— Engineering Contractor —

246 GHILOTTI AVENUE • SANTA ROSA, CA 95407 • 707-585-1221 • FAX: 707-585-0129

[www.ghilotti.com](http://www.ghilotti.com)

STATE CONTRACTORS LICENSE #644515

BI 10-12 – REAPs and analytical reports	\$38,300
BI 18 – Clearing and Grubbing	\$15,265.10
BI 27 – Jointed Plain Concrete Pavement	\$34,100
<u>BI 33-39 – Storm Drain System</u>	<u>\$560,310</u>
	\$647,975.10

The value of this unsolicited work by GBI equals 15.4%. GBI made no effort to increase its DBE participation by making this work available to DBE firms, but rather it is self-performing this work.

GBI did make Concrete Structures available presumably referring to BI 29 – Structural Concrete, Drainage Inlet which it bid for \$179,400. On its “Rejected DBE’s Form” GBI stated “No other DBE quotes received” in reference to the Concrete Structures item of work. However, both Ghilotti and Argonaut, the 2<sup>nd</sup> and 3<sup>rd</sup> low bidders, received a quote from MJD Engineering (a DBE firm) for BI 29 – Structural Concrete, Drainage Inlet. MJD’s quote for BI 29 – Structural Concrete, Drainage Inlet was \$144,300. GBI could have significantly increased its DBE participation by selecting MJD to perform BI 29, but chose to self-perform this item of work.

Additionally, Ghilotti and Argonaut received a quote from MJD Engineering for BI’s 33-39 – Storm Drain System, work that GBI valued at \$560,310. GBI did not have access to MJD’s quote because it did not make the storm drain system work available to DBE’s nor did it solicit for DBE participation involving the storm drain. GBI could have significantly increased its DBE participation by soliciting MJD to perform BI’s 33-39, but chose to self-perform this scope of work.

Having made less than 48% of the contract work available to DBE firms, GBI could have foreseen the difficulty in meeting the goal but chose to self-perform work that DBE firms were available to do.

49CFR26 App A IV (D)(2) states: “the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.”

Ghilotti and Argonaut, the 2<sup>nd</sup> and 3<sup>rd</sup> low bidders met the 15% goal.

The Department’s specification **2-1.12B(3)** states regarding the DBE Good Faith Efforts Submittal, “The Department considers DBE commitments of other bidders in determining whether the low bidder made good faith efforts to meet the DBE goal.”

49CFR26 App A V states: “In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal.”

GBI did not meet the DBE goal of 15% and did not demonstrate sufficient good faith efforts in its scope, intensity, and appropriateness towards meeting the goal. As such, its bid must be deemed nonresponsive.

Thank you for considering this matter.

Charles Sumner

**Thomas Smith**  
Estimating Manager

Attachment





4501 Rio Linda Boulevard  
Sacramento, CA 95838

Office: 916.696.2924  
Fax: 916.721.2471

DIR/PWC #1000038364  
DBE #43095  
SIGNATORY

## BID PROPOSAL

**18-80**

Wednesday, October 31, 2018

GENERAL CONTRACTOR "A" ENGINEERING LICENSE #406402

BID PROPOSAL TO:

BID PROPOSAL BY:

JOB NAME:

**GHILOTTI  
CONSTRUCTION**

**Mario De Souza**  
President

**04-4H9804 INSTALL  
CONCRETE BARRIER and  
DRAIN IMPROVEMENT**

LOCATION:

MOBILE 916-202-3793

**MARIN COUNTY**

### SCHEDULE OF VALUES

DESCRIPTION	UNITS	ESTIMATED QUANTITY	UNIT PRICE	SUBTOTAL
item no. 29(f) code 510094 STRUCTURAL CONCRETE, DRAINAGE INLET	CY	78	\$ 1,850.00	\$ 144,300.00
item no.33 code 610107 15" ALTERNATIVE PIPE CULVERT	LF	280	\$ 180.00	\$ 50,400.00
item no. 34 code 610108 18" ALTERNATIVE PIPE CULVERT	LF	3070	\$ 198.00	\$ 607,860.00
item no.35(f) code 610300 concrete backfill (PIPE TRENCH)	CY	92	\$ 190.00	\$ 17,480.00
item no. 36 code 665711 12" SLOTTED CORRUGATED STEEL	LF	340	\$ 180.00	\$ 61,200.00
item no. 37 code 665716 18" SLOTTED CORRUGATED STEEL PIPE (.064" THICK)	LF	480	\$ 195.00	\$ 93,600.00
Item 38 code 710150 REMOVE INLET	EA	2	\$ 1,200.00	\$ 2,400.00
item 39 code 710250 MODIFY INLET to MANHOLE	EA	1	\$ 4,100.00	\$ 4,100.00
item no. 42(f) code 750001 MISCELLANEOUS IRON and STEEL (for DI,MH only)	LB	19506	\$ 2.60	\$ 50,720.80
item 69 code 999990 MOBILIZATION	LS	1	\$ 100,000.00	\$ 100,000.00

**Bid Total**

**\$1,132,060.80**